a fisherman taking possession the next moment thereby had the title. Large amounts of capital are to-day invested in wild animals imported for exhibition, and grave injustice may some time arise from a strict application of the ancient rule.

THE PAROL EVIDENCE RULE AGAIN. — The following communication contains additional facts regarding the case of *In Re Root's Estate*, where the Supreme Court of Pennsylvania reversed the decision of the Orphans' Court on the ground that it was error to admit evidence of the testator's intention.

"By way of supplement to the note in the November number of the REVIEW (p. 210), on 'The Parol Evidence Rule as Applied to Wills,' it may be added that in the case commented on (Root's Estate, 40 Atl. Rep. 818; s. c. 187 Pa., 118), the Court ignores, and the report fails to mention, the fact that the will itself, as will be seen from the following extract, shows that the testator spoke of his wife's nephews as 'my nephews': — 'And . . . after the decease of my said dear wife, I do give . . . : Unto my wife's cousin, M. L. Greer, . . . $6000; unto my nephew, William Root, . . . $1000; unto my nephew, George Clayton, . . . $1000; unto my wife's sister, Sarah Root, . . . $1000; unto my nephew, Henry Sheppard, . . . $1000; unto my nephew, John Sheppard, . . . $1000.'

"Of the persons thus described as 'my nephews,' George Clayton was his nephew, while Henry Sheppard and John Sheppard were, admittedly, the nephews of his wife: whether, therefore, the 'William Root' intended was actually his nephew of that name, or the William who was his nephew only in the sense in which the two Sheppards were, was the question; and in the court below, the matter having, under exceptions to the original adjudication, been referred back to the Auditing Judge for inquiry upon this point (Legal Intelligencer, February 5th, 1897, 6 District Rep., 78), it was found from the evidence that of the two persons to whom, in the sense indicated by the will, the language was equally applicable, William Root, the wife's nephew, was the one intended, and the legacy was accordingly awarded to him."

These facts show an unusual combination of circumstances. Had there been two true nephews named William Root it has long been settled law that the testator's declarations of intention would be admitted. This would be a case where, in the dictionary meaning of the words, the will applies exactly to two persons. The principal case differs in that one of the William Roots was a wife's nephew, and that the dictionary meaning of the words would point to but one of the William Roots and exclude the other. But when the entire will is examined — as it undoubtedly may be in such a case — it appears that the testator was not using the term "my nephew" in its strict dictionary sense, but indiscriminately, as meaning either "my nephew," or "my wife's nephew." That is, if the will is used as a dictionary and the testator is made his own interpreter, it appears that he attached a meaning to the phrase "my nephew" which was equally applicable to either William Root, and that, accordingly, there were here two persons who in the light of the whole instrument exactly filled the description. Whether there is sufficient difference between this case and the case of two real nephews of the same name to warrant the exclusion here of the declarations of intention is a question which, until the present case, has apparently never come before a court. It is accordingly the

more to be regretted that the point was not discussed. On the one side it might be truly said that the rule regarding declarations of intention is an iron-bound product of centuries, and not to be extended in courts of law beyond the exact case of two persons or things each meeting the description equally well. See Thayer, Preliminary Treatise on Evidence, pp. 417–445. On the other side the cases appear to be substantially the same, for words are but emblems of meaning, and their meaning here as indicated by the testator himself applies equally to the two persons. When the case is thus analyzed the distinction really seems "a distinction without a difference."

ACCESSION OF PROPERTY. — Where a substance is the product of the labor or property of two individuals, its ownership is a question to be determined by the rules of accession. Some courts have made the right of the injured party to claim the new article depend on the question whether the identity of his original materials can be made out by the senses. Such and other arbitrary distinctions based on mere physical reasons were wisely discarded by a more modern case. When the title to the new article is the point in issue, the first question must be, how much has each party contributed to make it what it is. If the converter by his labor has increased the value of the plaintiff's goods so greatly that it appears grossly unjust to deprive him of the new product, the former owner is precluded from appropriating it. On such reasoning as this Judge Cooley in *Wetherbee* v. *Green*, 22 Mich. 311, decided that an increase in value of twenty-eight times was sufficient to vest title in the taker. Such a ruling naturally leaves to the discretion of future courts the question of the exact ratio at which the balance will turn and the labor of the converter will belong to the owner of the goods. The case of *Eaton* v. *Langley*, 47 S. W. Rep. 123 (Ark.) supports the principles of *Wetherbee* v. *Green*. The defendant by mistake cut down the plaintiff's standing timber, and worked it into cross-ties. A resulting increase in value of six times the court held not sufficient to vest the title to the new product in the defendant. There was no contention that bad faith entered into the transaction, and it was not necessary for the court to discuss the questionable doctrine of *Silsbury* v. *McCoon*, 3 Comst. 378, that a wilful converter can never avail himself of the doctrines of accession.

If it is the object of the law to establish justice between the parties, why not hold them tenants-in-common in proportion to their respective contributions, instead of giving the whole mass to one or the other? The plaintiff, it may be argued, would then be fully compensated, without the defendant being unnecessarily punished. Such a result is recognized by the courts in the closely analogous subject of confusion of goods. The answer to this reasoning seems to be found in the distinction between accession and confusion. In the latter case the mass, being of the same nature as its original materials, is easily divisible. In the former the new product is rarely incapable of partition without its resulting destruction. In confusion the volume of the mixture being readily ascertainable by weight or measure, the rights of the parties are susceptible of easy adjustment, each taking the share of the whole which the law gives him. In accession, if both the converter and the injured party are to be given legal interests in new product, the principles of tenancy in common preclude the plaintiff from ever obtaining the chattel or any part of it. He is com-